

Minutes Formal City Council Meeting July 7, 2005

Minutes of the Formal Council Meeting of Thursday, July 7, 2005, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Municipal Building, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman
Vice Mayor Mark W. Mitchell
Councilmember P. Ben Arredondo
Councilmember Barbara J. Carter
Councilmember Leonard Copple
Councilmember Pamela L. Goronkin
Councilmember Hut Hutson

Mayor Hallman called the meeting to order at 7:30 p.m.

1. Councilmember Hutson gave the invocation.
2. Mayor Hallman led the audience in the **Pledge of Allegiance**.
3. **MINUTES**

A. Approval of Council Meeting Minutes

Motion by Councilmember Arredondo to approve the following **COUNCIL MEETING MINUTES**. Second by Councilmember Goronkin. Motion passed unanimously on a voice vote.

1. Council Executive Session – May 5 & 19, June 2 & 16, 2005
2. Council Issue Review Session – June 2 & 16, 2005 [20050707clrkck01.pdf](#)
[20050707clrkck07.pdf](#)
3. Council Formal Meeting – June 2 & 16, 2005 [20050707clrkck05.pdf](#)
[20050707clrkck06.pdf](#)
4. Council Special Budget Meeting – June 2 & 16, 2005 [20050707clrkck02.pdf](#)
[20050707clrkck04.pdf](#)
5. Rio Salado Community Facilities District Board Meeting – June 2, 2005
[20050707clrkck03.pdf](#)
6. Joint Tempe/Scottsdale Council Dinner Meeting – June 9, 2005 [20050707clrkck08.pdf](#)
7. Council Dinner Meeting – June 13, 2005 [20050707clrkck09.pdf](#)
8. Council's Central City Development Committee of the Whole – June 16, 2005
[20050707ccd01.pdf](#)
9. Council's Technology Advancement, Tourism & Redevelopment Committee –

June 13 & 27, 2005 [20050707tatr01.pdf](#) [20050707tatr02.pdf](#)

B. Acceptance of Board & Commission Meeting Minutes

Motion by Councilmember Arredondo to accept the following **COMMITTEE & BOARD MEETING MINUTES**. Second by Vice Mayor Mitchell. Motion passed unanimously on a voice vote.

10. Aviation Commission – May 25, 2005 [20050707tavco01.pdf](#)
11. Board of Adjustment – May 25, 2005 [20050707boa01.pdf](#)
12. Committee for Youth, Families & Community, May 16, 2005 [20050707cyfc01.pdf](#)
13. Community Special Events Task Force – June 21, 2005 [20050707setf01.pdf](#)
14. Building Code Advisory Board Work Session – May 31, 2005 [20050707bcab01.pdf](#)
15. Disability Concerns Commission – April 19, 2005 [20050707dcc01.pdf](#)
16. Hearing Officer – May 17 & June 7, 2005 [20050707ho01.pdf](#) [20050707ho02.pdf](#)
17. Municipal Arts Commission – April 13, 2005 [20050707mac01.pdf](#)
18. Parks & Recreation Board – May 10, 2005 [20050707csmr01.pdf](#)

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements

- Mayor Hallman summarized that the City of Tempe and Arizona State University worked for several months to create the Joint Review Committee, which will be charged with the obligation to review projects on University property. This allows University properties to be subject to review for design review and other building issues. The agreement requires that ASU appoint three members (and two alternates) and that the City Council appoint three members (and two alternates), with one joint appointment shared by Tempe and ASU. The Mayor announced consideration of the following appointments for the Joint Review Committee:

Tempe Regular Members:

Jodi Liggett	Term Expires 7-7-08
Doug McQueen	Term Expires 7-7-07
Pen Johnson	Term Expires 7-7-06

ASU Regular Members:

Wellington "Duke" Reiter	Term Expires 7-7-08
Scott Cole	Term Expires 7-7-07
Ray Jensen	Term Expires 7-7-06

Joint Tempe/ASU Appointment:

Mark Thompson	Term Expires 7-7-08
---------------	---------------------

Motion by Councilmember Copple for approval of the Joint Review Committee appointments as read. Second by Councilmember Arredondo. Motion passed on a roll call vote, 7-0.

- Mayor Hallman announced that applications for the Ad Hoc Rental Housing Committee will be received at the City Clerk's Office through July 29th at 5 p.m.
- Applications for two City alternate positions on the Joint Review Committee will be

received until August 31st at 5 p.m. Applications currently on file will also be considered.

- Mayor Hallman stated that the City of Tempe is not in a position to comment on the Amaya case further, based on a decision made today, July 7th, by our insurance carrier that that carrier has now taken full control of the case.

B. Manager's Announcements

- City Manager Will Manley announced that Chris Anaradian has been promoted to the position of Development Services Manager.

5. **AGENDA**

All items in these minutes identified with an asterisk (*) **are public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA**.

Motion by Councilmember Arredondo to approve the Agenda as amended (Item #28 was removed for separate consideration). Second by Councilmember Hutson. Motion passed on a roll call vote, 7-0.

A. Miscellaneous Items

19. Approved the Report of Claims Paid to be Filed for Audit for the weeks of June 5, 12 & 19, 2005.

COMMENTS: A copy of the detailed claims report may be obtained by contacting the City Clerk's Office.

20. Authorized the Mayor to sign **Contract #2005-151**, an Intergovernmental Agreement between the City of Tempe and the City of Phoenix for the ASU Unlimited Access Bus Pass Program.

DOCUMENT NAME: [20050707pwry01.pdf](#) **PUBLIC TRANSIT (1106)**

21. Authorized the City Attorney to file an appeal in the administrative action, City of Tempe v. Arizona Department of Revenue.

DOCUMENT NAME: [20050707cacc01.pdf](#) **CITY ATTORNEY
ADMINISTRATION (0501-02)**

22. Authorized the City Attorney to file an appeal in the administrative action, City of Tempe v. ADEQ.

DOCUMENT NAME: [20050707cacc02.pdf](#) **CITY ATTORNEY
ADMINISTRATION (0501-02)**

23. Approved the hiring of additional outside legal counsel to provide condemnation litigation

services for light rail project property acquisition.

DOCUMENT NAME: [20050707pwjsm02.pdf](#) **CITY ATTORNEY ADMINISTRATION (0501-03)**

24. Approved **with conditions** an Amended Final Subdivision Plat by SANDAHAL HOMES at 8150 and 8180 South Jentilly Lane.

COMMENTS: (City of Tempe, property owner) #SBD-2005.61 (CC050039) for an Amended Final Subdivision Plat consisting of two (2) lots on .77 net acres.

The following conditions were approved:

1. The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
 - a. Off-site improvements to bring roadways to current standards include:
 - (1) Water lines and fire hydrants
 - (2) Sewer lines
 - (3) Storm drains
 - (4) Roadway improvements including streetlights, curb, gutter, bikepath, sidewalk, bus shelter, and related amenities.
 - b. Fees to be paid with the development of this project include:
 - (1) Water and sewer development fees,
 - (2) Water and/or sewer participation charges,
 - (3) Inspection and testing fees.
 - c. All applicable off-site plans shall be approved prior to recordation of Final Subdivision Plat.
 - d. All street dedications shall be made within six (6) months of Council approval.
 - e. Public improvements must be installed prior to the issuance of any occupancy permits. Any phasing shall be approved by the Public Works Department.
 - f. All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this (re)development in accordance with the Code of the City of Tempe – Section 25.120.
2. The Final Subdivision Plat shall be recorded prior to the issuance of permits.
3. The Final Subdivision Plat shall be put into proper engineering format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before July 7, 2006**. Failure to record the plan within one year of Council approval shall make the plan null and void.

DOCUMENT NAME: [20050707dsd2k08.pdf](#) **PLANNED DEVELOPMENT (0406)**

25. Approved **with conditions** a Preliminary and Final Subdivision Plat by the TEMPE POLICE DEPARTMENT for the proposed substation at 1855 East Apache Boulevard.

COMMENTS: (City of Tempe, property owner) (CC050017) #SBD-2005.43 for a Preliminary and Final Subdivision Plat, consisting of one (1) lot on 8.74 net acres.

The following conditions were approved:

1.
 - a. The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
 - b. Off-site improvements to bring roadways to current standards include:
 - (1) Water lines and fire hydrants
 - (2) Sewer lines

- (3) Storm drains
- (4) Roadway improvements including streetlights, curb, gutter, bikepath, sidewalk, bus shelter, and related amenities.
- c. Fees to be paid with the development of this project include:
 - (1) Water and sewer development fees,
 - (2) Water and/or sewer participation charges,
 - (3) Inspection and testing fees.
- d. All applicable off-site plans shall be approved prior to recordation of Final Subdivision Plat.
- e. All street dedications shall be made within six (6) months of Council approval.
- f. Public improvements must be installed prior to the issuance of any occupancy permits. Any phasing shall be approved by the Public Works Department.
- g. All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this (re)development in accordance with the Code of the City of Tempe – Section 25.120.
- 2. No variances may be created by future property lines without the prior approval of the City of Tempe.
- 3. The Final Subdivision Plat shall be put into proper engineering format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before July 7, 2006**. Failure to record the plan within one year of Council approval shall make the plan null and void.

DOCUMENT NAME: [20050707dsrl01.pdf](#) **PLANNED DEVELOPMENT (0406)**

26. Approved **with conditions** an Amended Subdivision Plat by FOUNTAINHEAD CORPORATE PARK (Lot 1A) at 1605 West Broadway Road.

COMMENTS: (Amberjack LTD, owner) (CC050034) **#SBD-2005.57** for a Preliminary and Final Subdivision Plat, consisting of two (2) lots on 9.52 net acres.

The following conditions were approved:

- 1. No variances may be created by future property lines without the prior approval of the City of Tempe.
- 2. The Final Subdivision Plat shall be put into proper engineering format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before July 7, 2006**. Failure to record the plan within one year of Council approval shall make the plan null and void.

DOCUMENT NAME: [20050707dsrl05.pdf](#) **PLANNED DEVELOPMENT (0406)**

27. Approved **with conditions** a Preliminary and Final Subdivision Plat for NEWTOWN MCKEMY for three (3) lots at 1105 South McKemy Street.

COMMENTS: (Newtown Community Development Corporation, property owner) (CC050028) **#SBD-2005.58** for a Preliminary and Final Subdivision Plat consisting of three (3) lots on 0.52 net acres.

The following conditions were approved:

- 1. a. The Public Works Department shall approve all roadway, alley, and utility easement dedications, driveways, storm water retention, and street drainage plans, water and sewer construction drawings, refuse pickup, and off-site improvements.
- b. Off-site improvements to bring roadways to current standards include:
 - (1) Water lines and fire hydrants
 - (2) Sewer lines
 - (3) Storm drains

- (4) Roadway improvements including streetlights, curb, gutter, bikepath, sidewalk, bus shelter, and related amenities.
- c. Fees to be paid with the development of this project include:
 - (1) Water and sewer development fees,
 - (2) Water and/or sewer participation charges,
 - (3) Inspection and testing fees.
- d. All applicable off-site plans shall be approved prior to recordation.
- e. All street dedications shall be made within six (6) months of Council approval.
- f. Public improvements must be installed prior to the issuance of any occupancy permits. Any phasing shall be approved by the Public Works Department.
- g. All new and existing, as well as on-site and off-site, utility lines (other than transmission lines) shall be placed underground prior to the issuance of an occupancy permit for this (re)development in accordance with the Code of the City of Tempe – Section 25.120.
- 2. No variances may be created by future property lines without the prior approval of the City of Tempe.
- 3. The Final Subdivision Plat shall be recorded prior to the issuance of building permits.
- 4. The Final Subdivision Plat shall be put into proper engineering format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department **on or before July 7, 2006**. Failure to record the plan within one year of Council approval shall make the plan null and void.
- 5. The alley shall be paved per City of Tempe standards from the eastern property line to McKemy Street.

DOCUMENT NAME: [20050707dsrl03.pdf](#) **PLANNED DEVELOPMENT (0406)**

*28.

THIS ITEM WAS REMOVED FOR SEPARATE CONSIDERATION.

This is a public hearing for an appeal of the May 24, 2005, Planning and Zoning Commission decision granting the PARAGON DANCE CENTER two (2) use permits in the PCC-1, Planned Commercial Center Neighborhood District, at 931 East Elliot Road, Suite 101.

COMMENTS: The Planning and Zoning Commission granted Paragon Dance Center the use permits with conditions. (Michael Pollack Investments, property owner/Lonnie Mitchell, business owner) (CC050020) **#SIP-2005.46** for two (2) use permits to allow live entertainment and receptions in a 9,134 s.f. leased area in the PCC-1, Planned Commercial Center Neighborhood District, including the following:

Use Permits:

- 1. To allow live entertainment in the PCC-1, Planned Commercial Center Neighborhood District
- 2. To allow a reception hall in the PCC-1, Planned Commercial Center Neighborhood District

APPLICANT PRESENTATION

Applicant Lonnie Mitchell stated that Council revoking the use permits would cause his business to fail. When he first started the business, Michael Pollack (owner of the development) sent his architect to do the build-out for his location. He had already been to the City to make sure he had the proper zoning. The architect said he would apply for the permits for him and he agreed. The architect called the next day and said everything was ready to go, so he went ahead and planned the business. The site has a front area and a back area, and he planned the back area to be used as a reception area on Saturday evenings and the front area would be used as a teaching studio. Suddenly, there was a problem with the noise. Because it was in the back

area, the music was too loud for the neighborhood. There was a meeting with the City planner, a police representative, the neighbors, Michael Pollack, and him. Even though he offered to fix the problem, the neighbors did not want the business there at all. In an attempt to remedy the situation, he invested \$5K in extra insulation and security guards in the back. Since then, there have been very few complaints. He feels his business has been wrongly presented. He responded to the allegations of alcohol on the premises and noted that there have been no noise complaints on Friday nights. The Police did a calibrated sound meter reading on a Friday night and no fault was found. An officer from the Department of Liquor Investigations came unannounced to a Friday night function and he could find no violation.

Mayor Hallman asked about the letter dated May 18, 2005, from Pour Masters Bartending Service.

Mr. Mitchell responded that for Saturday night receptions, he requires the guests who are renting the facility to hire the service of Pour Masters. The Department of Liquor investigator agreed that this is one of the better servers, and as long as there is no money collected at the door, and as long as Pour Masters serves the alcohol, he is operating within the letter of the law. Apparently, the neighbors said there was alcohol on all the weekend evenings, and that is a misrepresentation of his business. The problem lies with Saturday nights. He has done everything he promised to do last February when he said it would take him a while to work through the issues. By the end of March, he had that business taken care of, and when a couple of complaints were made, the police officers said the noise was not above the ambient level. There were no complaints from April 2 through June 26, and there have been ten functions with no police complaints. The business hours were cut back even on Friday nights when there has never been a complaint. He feels he has done what he needed to do. He feels he should be given his permits and allowed to prove his business can operate successfully. He also asked to have the later closing time restored on the weekend nights.

PUBLIC HEARING

Leona Akin and Steve West, Tempe. They are professors at ASU and their hobby is ballroom dancing. They became students of Mr. Mitchell in 1996 and were delighted when he moved his business from Chandler to Tempe. His studio is in a facility that went unoccupied for many years. They have attended the Friday night functions since 1996, classes in ballroom techniques from 7:30 to 9:15, followed by open dancing to practice what they have learned. At the Friday night functions, there is no smoking, there is no drinking and there are no drugs. Mr. Mitchell serves ice water, coffee, cut-up fruit and a few sweets. People of all ages attend. Mr. Mitchell demands complete professionalism, he is a good citizen, and he has won awards for his dance contributions.

Kurt Mattson, Tempe. He is a homeowner and he filed the appeal asking Council to reverse the May 24th decision of the Planning and Zoning Commission which granted permits allowing Mr. Mitchell to operate Paragon Dance Studio as a nightclub and banquet facility. Specifically, the neighbors are petitioning City Council to reverse the decision because: (1) the persistent noise, vibrations and nuisance cause a detriment to the surrounding neighborhood; (2) the underlying decision of the Planning and Zoning Commission was based on inaccurate Police Department data presented by Development Services Department's lack of due diligence; (3) Paragon's owner operated a live entertainment and banquet activities without permits for several months prior to applying for the special permits and continued to operate the business even though he had received a citation from the City for operating without those permits; and (4) the mitigating efforts of the owner have not

rectified the situation. There have been fewer complaints because there have been fewer events. When he purchased his home, he was aware he was next to a business property, however, the nature of this particular business is not appropriate in such close proximity to a residential area. The neighbors are accustomed to the sound of delivery trucks and garbage trucks during the day. Prior to the arrival of Paragon, there was no problem. The petition shows over 60 signatures of area citizens who are concerned about this business and who object to its activity. There is also detail from the Police Department of at least 15 citizen complaints regarding the noise and vibrations of Paragon's parties. Tempe's Zoning Code states that the granting of a special use permit is not deemed a right, but the burden of proof is on the applicant to demonstrate that the use will not be detrimental to persons residing or working in the vicinity. The owner of the nightclub has not demonstrated that the operation of the nightclub and banquet facility is not a detriment to the surrounding residential community.

Gloria Teague, Tempe. She has worked for the applicant for over eight years. She has never seen alcohol or drugs in the facility.

Jennifer Basinger, Tempe. Her house is sixty feet behind the Paragon. She is subjected to loud music, vibrations, people partying, urinating, screaming, tires screeching, all the things you would expect when you have hundreds of people together with drinking late into the night. It has prevented her from enjoying her backyard. She hears it from inside the house. She has to wait to go to sleep on Saturday nights until the parties are over. While she appreciates efforts to mitigate some of the noises, the Saturday evenings when the facility is rented to third party groups and he is not in control are the areas of problems. A typical party consists of very loud music and drinking. The City stated that there were four police reports. There were nine or ten neighbors who were at the meeting that said they had had the police in their houses more than that. There were fifteen noise reports that were documented. The neighbors have tried to be respectful and sometimes haven't placed calls. She does not believe there were decibel readings taken.

Mayor Hallman asked if the issue is with the Saturday night events where the facility is being rented out to third parties.

Ms. Basinger confirmed that. Initially, that was not true; but over the last several months, it has been only the Saturday evening parties that have been the problems.

Councilmember Copple asked if she had the impression that the people using the Paragon were parking their cars in that back service area rather than in the parking lot in front.

Ms. Basinger responded that they were and many were people who were involved in setting up the party. Mr. Mitchell has tried to keep a lot of this away, but live bands and drinking are not conducive to the residential area she bought into.

Helen Sorrell, Maricopa. She frequents the Paragon Dance Center on Friday evenings and believes that Mr. Mitchell runs a very good, upstanding business that is enjoyed by many people. She has been involved in some of the preparation for the Saturday events and during the day when preparation is being made, there is some activity in the back parking lot. She wasn't aware that it was as bad as was explained earlier. With the

conditional permits, ending time is 11 p.m. and there is someone there to end the activity. She hopes there is a way to resolve this so that everyone is benefited.

Penny Mattson, Tempe. Her house is behind the Paragon Dance Center. This business has affected her life. She has stayed in Tempe because of the quality of life the City has offered. This peace and enjoyment has been interrupted since last November. Unfortunately, this disturbance has continued and she can still feel vibrations and hear the music. The owner states that he will shut down and end any parties that get out of hand, but should the neighbors face this possibility every Saturday night? There haven't been as many calls to police during the last couple of months, but she didn't think there have been as many Saturday night events. One argument for granting the permit is the John Henry's Restaurant, which sometimes features live entertainment, and the Vine Tavern, also located in that strip mall. The John Henry's Restaurant is far from any home and is close to the street. The Vine is also close to the street. The Paragon Dance Center features live bands, complete with drums and electric guitars. The Zoning Code states that the burden of proof is on the applicant to demonstrate that the business will not have a negative effect on the people within the area. This business's activity seems to fly in the very language of the Code regarding noise and nuisances and business activity next to residential areas.

David Basinger, Tempe. He is seriously concerned about Paragon's operation and the City's handling of this matter. It is important to note that Paragon was in violation of City Code for at least a six months. They didn't have the use permits in place to be operating as a dance club, and after they were notified by the City of this violation, they continued the activity with total disregard for the neighbors. The commotion and vibration can be heard and felt 300 feet away. The noise levels are over the ambient level. He is not opposed to the gathering size, to the dance lessons, or to the ballroom dancing. He is surprised that a person could operate a business without permits for 9 months and then appear before the Planning and Zoning Commission and have it approved at that time. There have been multiple complaints and ongoing problems.

Randy Kuntz, Tempe. He is opposed to Paragon. All walls in his house shake, but only on Saturday nights.

APPLICANT'S RESPONSE:

Mayor Hallman asked if there were any contracts since April 2 that were not included in the information that Council received.

Mr. Mitchell responded that they had one cancellation during that time, but all contracts were included. They are not always booked on every Saturday night. All of the agreements included represent functions that did take place since April 2, and there have been no Saturday night complaints. The night the decibel reading was taken, there was a function there.

Mayor Hallman asked if Mr. Mitchell would concede that the Saturday night functions are imposing a burden on the neighbors.

Mr. Mitchell conceded that they used to, but now they have a security guard and they don't allow parking in the back in the evening hours. The caterers can drop off their things there, but they have to exit through the front. The caretaker cannot take the trash out the back exit, but has to take it out the front and use a different dumpster. They have worked long and hard to take care of the problems. They may get one or two bands per year at these functions, but they are usually DJs.

Vice Mayor Mitchell asked if Mr. Pollack knew the original intent of the business when he originally signed the lease.

Mr. Mitchell responded that he knew it was a dance studio and reception center. It is not a night club.

Vice Mayor Mitchell asked if he had this type of activity at his previous location, and if he had a permit there.

Mr. Mitchell responded that the activity at both locations was the same. In Chandler, he didn't have to have a permit. Mr. Pollack bought the business from the people who had it before and it was a wedding reception/dance studio. He purchased the business and set him up in it. As far as he knew, there were no permits purchased with it. He operated for five years at Alma School and Elliot in Chandler without any problems whatsoever. It also abutted a neighborhood.

Vice Mayor Mitchell asked, after he had received the violations from the City, whether he continued to operate his business knowing that he was in violation.

Mr. Mitchell responded that he went down and applied for the permits and he was told he wouldn't be shut down, but he must fix things. He had already pre-rented the facility out. He has been in the dance business for 20 years and in the wedding reception business for five years. In Tempe, you don't need a permit for a dance studio. The architect listed it as Paragon Dance Center and he was told we didn't need to have permits. The variation comes in when we give classes and then have open dancing afterwards. That's considered live entertainment and that's a different permit from a dance studio. He has been in the business for more than 20 years and he never heard of that permit usage before.

Vice Mayor Mitchell stated that this Council has discussed at length use permits in shopping centers that abut neighborhoods. Council is continuing to investigate how we can work with potential and existing businesses. The problem here is a business under one assumption that is being run as an entirely different business.

Councilmember Goronkin asked staff about the information with regard to calls for police service.

Development Services Planner Steve Abrahamson responded that when it went before the Planning and Zoning Commission on May 24th, he presented the information that was available; but since then, we have found that there were more calls for service.

Police Officer Jeff Miller stated that the specific address of 931 E. Elliot was run and there were three calls for service reported to that specific address as the location of a music or a noise complaint. There are reporting districts in the City, and there was one additional call in that reporting district that gave no specific location, so there were four that were initially run. After the issues were raised, they did a more expansive search and found more calls. In fact, there were 12 recorded as line item entries and given specific incident numbers for an officer response. Two of those calls contained additional calls, where in the comments it was noted that there was a second and third call. When people call in, it is possible that the same call-taker will take the call and will already be aware of the call and will not make any notations, knowing that an officer is going to respond already.

Councilmember Hutson stated that if this Council decides to extend this permit for any period of time, he would strongly recommend that a sound metering check be done unannounced on a Saturday evening.

Councilmember Carter asked about the discrepancy about calls for complaints. There was a time period stated as six months and another time period of over eighteen months. How long have we been taking complaints?

Officer Miller responded that the original period that was run was an eighteen-month period, however, the only calls actually registered during that period started in November of 2004.

Mr. Mitchell stated that functions actually ran from June 2004 to November 2004, but the doors were closed because it was hot and the air conditioning was running. In November 2004, the doors were propped open and the complaints started. The reason there haven't been any calls in the last ten functions is because the doors have not been allowed to be open and they don't allow parking in the back or use of the back doors.

Councilmember Carter asked staff for the numbers of complaints for service since April 2005.

Officer Miller responded that the last complaint was for April 2, 2005. There was one additional complaint on June 26th, which was a Sunday evening.

Councilmember Arredondo asked if the applicant is totally responsible for knowing that they should have a use permit.

Development Services Manager Chris Anaradian verified that was correct. It is not the owner of the property, but the owner of the business who is responsible for the permits.

Mayor Hallman stated that the difficulty we face is that we are attempting to reinvigorate the aging and dying strip malls. We have worked with the owner of this strip mall, for example, to entice him to spend a substantial sum of money to change it from a dying mall into something that could actually help support the neighborhoods. The explanation might be, to some extent, the doors being propped open might have exacerbated the problem. It seems to have tapered down. It sounds like the owner's on his best behavior and the neighbors aren't seeing disturbances, but we can't necessarily know whether he has changed his course. Perhaps providing an interim permit through September 27, 2005, is a nice start because that gives the applicant four months to continue his good behavior and staff can be very alert to what is going on. After September 27th, to continue only on an interim basis through the next following period to assure that when the cooler weather comes the doors don't again get propped open and people don't behave badly. By keeping this business on a short leash, we can see whether it can be operated both profitably with the appropriate level of accommodation to the surrounding residents.

Councilmember Carter suggested adding a further stipulation relating to use of the back door.

Mayor Hallman suggested something that specifies that the rear doors would not be used except in an emergency situation and that there is security at the back doors.

Councilmember Hutson stated he would like to see sound readings done unannounced on a Saturday night, and at different times, close to the residences, as well as the commercial property, and have those readings available at the next session.

Councilmember Arredondo asked Mr. Mattson if these stipulations would be acceptable for a trial period.

Mr. Mattson responded that it would not be an acceptable solution.

Mayor Hallman stated that the business, since April, has been run in a way so as not to impose these burdens, and the question then is do we see whether that change in behavior is permanent or merely intended to satisfy for this evening's performance.

Councilmember Carter asked Mr. Mitchell when he rents out the space on Saturday nights whether he is present.

Mr. Mitchell stated that he has an employee who is present and he has had success with the DJs keeping the noise down.

Motion by Councilmember Arredondo to approve the appeal in Item #28 and deny the permits. Second by Vice Mayor Mitchell. Motion passed on a roll call vote, 6-1, with Councilmember Goronkin voting no.

DOCUMENT NAME: [20050707dssa09.pdf](#) **PLANNED DEVELOPMENT (0406)**

29. Approved **Contract #2005-97A**, an amendment to Development Agreement C2005-97 relating to a traffic signal for the Light Rail Project.

COMMENTS: This amendment clarifies the responsible financial parties. The Development Agreement was originally approved on May 19, 2005. Inclusion of Salt River Project in the original agreement and staff summary approved on May 19, 2005, was incorrect. The agreement is only between the City of Tempe, Papago Park Center, and Chamberlain Development.

DOCUMENT NAME: [20050707pwjsm01.pdf](#) **PUBLIC TRANSIT (1106)**

- *30. Held a public hearing and approved a Series 6 Bar liquor license for 3 Deep Bar Concepts, LLC, dba Zuma Grill, 605 S. Mill Avenue.

COMMENTS: Bryon Russell, Agent

DOCUMENT NAME: [20050707LIQ4.pdf](#) **LIQ LIC (0210-02)**

- *31. Held a public hearing and approved an After-Hours Establishment permit for Premier Bar Consulting, dba Arizona Beach Club, 430 N. Scottsdale Road.

COMMENTS: Randy Feldman, Applicant.

DOCUMENT NAME: [20050707STAX3.pdf](#) **LIQ LIC (0210-02)**

- *32. Held a public hearing and approved a Series 7 Beer & Wine Bar liquor license for

Bogie's Clubhouse Etal, dba Bogie's Clubhouse, 800 E. Divot Drive.

COMMENTS: James A. Godfrey IV, Agent

DOCUMENT NAME: [20050707LIQ2.pdf](#) LIQ LIC (0210-02)

- *33. Held a public hearing and approved a Series 12 Restaurant liquor license for Bogie's Clubhouse Etal, dba Bogie's Clubhouse, 800 E. Divot Drive.

COMMENTS: James A. Godfrey IV, Agent

DOCUMENT NAME: [20050707LIQ1.pdf](#) LIQ LIC (0210-02)

B. Award of Bids/Contracts

34. Approved the use of a five-year Maricopa County contract with American Refrigeration Supplies, Inc., Arizona Trane Parts, Burke Engineering, Grainger Industrial Supply, Industrial Mining Supply Company, Refrigeration Supplies Dist. (RSD), United Refrigeration, and Webb Distributors, Inc., for HVAC tools, parts, and accessories.

COMMENTS: Total cost of this contract shall not exceed \$1,750,000 during the initial contract period.

DOCUMENT NAME: [20050707fslg01.pdf](#) PURCHASES (1004-01) Contract #03245-C

35. Approved a six-month contract with Audio Visual Resources (AVR) for design, purchase and installation of a video conference system for the Water Utilities Department.

COMMENTS: Total cost shall not exceed \$50,000.

DOCUMENT NAME: [20050707fst11.pdf](#) PURCHASES (1004-01) AD020018-003-A2

36. Approved nine-month contract renewals with Kelly Services, Staffmark Pacific, LLC, Randstad NA, and Corporate Job Bank for temporary employment services.

COMMENTS: Total cost shall not exceed \$500,000. Contract #AD000171

DOCUMENT NAME: [20050707fsdl02.pdf](#) PURCHASES (1004-01)

37. Approved one-year contract renewals with North Valley Motorsports, Williams Detroit Diesel, Trucks West of Phoenix, I-10 International, Sanderson Ford, Chapman Chevrolet, RLS Services, Valley Truck and Trailer Service, The Lighthouse, Watkins Specialists, Mesa Mustang and Upholstery, Arizona Rubber, American Filter, NAPA Genuine Parts, Factory Motor Parts, Pro Auto Parts, Granberry Supply, and Heil Company for auto parts and service.

COMMENTS: Total cost not to exceed \$474,500.

DOCUMENT NAME: [20050707fsdl03.pdf](#) PURCHASES (1004-01) T02-065-01/02/03/04/05/07/09/10/14/19/20/21/25/26/27/29/31/32

38. Approved a one-year contract renewal with Language Line Services for translation services.

COMMENTS: Total cost not to exceed \$40,000.

DOCUMENT NAME: [20050707fsdl04.pdf](#) PURCHASES (1004-01) T04-085-01

39. Approved a one-year contract renewal with The Advocacy Group for federal lobbyist and information services.
COMMENTS: Total cost shall not exceed \$84,000.
DOCUMENT NAME: [20050707fslg06.pdf](#) **PURCHASES (1004-01)** T04-002-01
40. Approved one-year contract renewals with Summit Electric Supply and Capital Electric Supply Company for electrical supplies.
COMMENTS: Total cost shall not exceed \$500,000.
DOCUMENT NAME: [20050707fslg07.pdf](#) **PURCHASES (1004-01)** T05-012-01 and T05-012-02
41. Approved one-year contract renewals with Wilbur Ellis Company, Helena Chemical Company, and Target Specialty Products for pesticides and chemicals.
COMMENTS: Total cost shall not exceed \$120,000.
DOCUMENT NAME: [20050707fslg09.pdf](#) **PURCHASES (1004-01)** T04-096-01, T04-096-02, T04-096-03
42. Approved one-year contract renewals with Pennington Seed and United Horticultural Supply for grass seed.
COMMENTS: Total cost shall not exceed \$70,000.
DOCUMENT NAME: [20050707fslg10.pdf](#) **PURCHASES (1004-01)** T03-002-01 and T03-002-02
43. Approved a \$19,000 increase in the contract amount with Carmanah Technologies, Inc., for solar lighting for bus shelters.
COMMENTS: Increase from \$106,000 to \$125,000.
DOCUMENT NAME: [20050707fslg08.pdf](#) **PURCHASES (1004-01)** T05-032-01
44. Awarded **Contract #2005-152**, a one-year, limited source contract, to Phoenix Fire Department for firefighter medical and physical exams.
COMMENTS: Subject to execution of final written contract. Total cost for this contract shall not exceed \$117,146 during the contract period.
DOCUMENT NAME: [20050707fsdl05.pdf](#) **PURCHASES (1004-01)** Limited Source #06-119
45. Awarded **Contract #2005-153**, a sole source contract, to Arizona Tactical for ballistic vests.
COMMENTS: Subject to execution of final written contract. Total cost for this contract shall not exceed \$61,000.
DOCUMENT NAME: [20050707fsdl12.pdf](#) **PURCHASES (1004-01)** Sole Source #06-027
46. Approved **Contract #2005-119A**, an addendum to a professional services contract with Superstition Foothills Consulting Services, Inc., for on-call utility permit inspection

services.

COMMENTS: Subject to execution of the final written addendum in an amount not to exceed \$12,000.

DOCUMENT NAME: [20050707PWTG01.pdf](#) **ENGINEERING ADMINISTRATION (0803-02)** PROJECT NO. 3222-6672

47. *DELETED*

48. Approved an addendum to a Construction Manager at Risk contract with Moline Construction Company for the Diablo Stadium Complex Improvements, Phase III.

COMMENTS: For a Guaranteed Maximum Price of \$2,573,646, subject to the execution of the final written addendum. PROJECT NO. 6301781

DOCUMENT NAME: [20050707PWJH09.pdf](#) **DIABLO STADIUM (0706-01)**

49. Awarded **Contract #2005-154** to 3D/International, and approved a contingency allowance of \$32,437 for change orders, for the Tempe Beach Park historic bleacher renovation.

COMMENTS: Subject to execution of the final written contract in an amount not to exceed \$356,805. PROJECT NO. 6501761

DOCUMENT NAME: [20050707PWDR03.pdf](#) **TEMPE BEACH PARK (0706-38)**

50. Awarded **Contract #2005-155** to 3D/International, and approved a contingency allowance of \$16,119 for change orders, for the Tempe Beach Park amphitheatre improvements.

COMMENTS: Subject to execution of the final written contract in an amount not to exceed \$354,607. PROJECT NO. 6501751

DOCUMENT NAME: [20050707PWDR04.pdf](#) **TEMPE BEACH PARK (0706-38)**

51. Awarded **Contract #2005-156**, a Construction Manager at Risk Design Phase Services contract, to Hunter Contracting Company for the Water Utilities Department security improvements.

COMMENTS: Subject to execution of the final written contract for an amount not to exceed \$61,248.

DOCUMENT NAME: [20050707PWTG05.pdf](#) **WATER MANAGEMENT ADMINISTRATION (0811-13)** PROJECT NO. 3201022

C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

*52. Introduced and held the **first public hearing** for an ordinance authorizing the Mayor to execute the First Amendment to Lease Agreement between the City of Tempe and

Angels Baseball, LP, for Tempe Diablo Stadium. **Set the second public hearing for July 21, 2005.**

DOCUMENT NAME: [20050707casv01.pdf](#) **DIABLO STADIUM (0706-12)**
ORDINANCE NO. 2005.45

- *53. Introduced and held the **first public hearing** for an Amended Planned Area Development Overlay for EMERALD CENTER (Lot 1C) at 1746 West Ruby Drive. **Set the second public hearing for July 21, 2005.**

COMMENTS: (CC050033) (Tait Development, property owner) **#SPD-2005.59** for an Amended Planned Area Development Overlay for 72,264 square feet of home furnishings retail on 6.13 net acres in the RCC, Regional Commercial District.

DOCUMENT NAME: [20050707dsrl04.pdf](#) **PLANNED DEVELOPMENT (0406)**

- *54. Introduced and held the **first public hearing** for an Amended Planned Area Development for FOUNTAINHEAD CORPORATE PARK at 1630 West Alameda Drive. **Set the second public hearing for July 21, 2005.**

COMMENTS: (CC050032) (Bircher Arizona for Amberjack, Ltd, property owner), **#SPD-2005.54** for an Amended Planned Area Development Overlay for Fountainhead Corporate Park consisting of 1,468,400 s.f. total building area on 74.58 net acres, including the following:

Use Permit:

1. Allow a 75,000 s.f. educational facility on Lot 7 in the GID, General Industrial District.

DOCUMENT NAME: [20050707dsd2k07.pdf](#) **PLANNED DEVELOPMENT (0406)**

- *55. Introduced and held the **first public hearing** for a Zoning Map Amendment, a Planned Area Development Overlay and a Subdivision Plat by MCINTYRE DONOHOE AND JONES PLACE at 306 South Wilson Street. **Set the second public hearing for July 21, 2005.**

COMMENTS: (CC040532) (McIntyre, Donohoe, & Jones, property owners) for three (3) single-family residences, including the following:

#ZON-2005.07 Ordinance No. 2005.36 for a zoning map amendment from R-3, Multi-Family Residential to R1-PAD, Single-Family Residential Planned Area Development Overlay on .38 gross acres.

#SPD-2005.44 for a Planned Area Development Overlay consisting of three (3) single-family residences consisting of 4,158 s.f., 4,338 s.f. and 4,356 s.f. in living area, including garages.

#SBD-2005.45 for a Final Subdivision Plat consisting of three (3) lots and 1 tract on .38 net acres.

DOCUMENT NAME: [20050707dsd2k06.pdf](#) **PLANNED DEVELOPMENT (0406)**

- *56. Introduced and held the **first public hearing** for an ordinance abandoning two public utility easements and one sewer easement within the LDS Institute property at 650 East

Orange Street. **Set the second public hearing for July 21, 2005.**

DOCUMENT NAME: [20050707PWMG06.pdf](#) **ABANDONMENT (0904-02)**

ORDINANCE NO. 2005.39

- *57. Introduced and held the **first public hearing** for an ordinance abandoning a roadway easement located adjacent to 510 East Knox Road. **Set the second public hearing for July 21, 2005.**

DOCUMENT NAME: [20050707PWMG07.pdf](#) **ABANDONMENT (0904-02)**

ORDINANCE NO. 2005.40

- *58. Introduced and held the **first public hearing** for an ordinance abandoning a water and sewer easement running through the proposed Police Substation site at 1855 East Apache Boulevard. **Set the second public hearing for July 21, 2005.**

DOCUMENT NAME: [20050707PWMG08.pdf](#) **ABANDONMENT (0904-02)**

ORDINANCE NO. 2005.43.

D. Ordinances and Items for Second Hearing/Final Adoption

- *59. Held the **second public hearing** and approved ORDINANCE NO. 2005.38 authorizing the transfer of City-owned property to Miravista/Vestar TM-Landco, LLC.

DOCUMENT NAME: [20050707dsnc01.pdf](#) **RIO SALADO MASTER PLAN (0112-07-03)**

- *60. Held the **second public hearing** and approved ORDINANCE NO. 2005.22 authorizing the historic designation of the D.J. FRANKENBERG HOUSE at 2222 South Price Road.
COMMENTS: (Church of the Epiphany, owner) (CC050023) **Ordinance No. 2005.22 #HPO-2005.40** for the historic designation of the D.J. Frankenberg House, located at 2222 South Price Road.

DOCUMENT NAME: [20050707dsrl02.pdf](#) **PLANNED DEVELOPMENT (0406)**

- *61. Held the **second public hearing** and approved ORDINANCE NO. 2005.37 authorizing **Contract #2005-157**, a lease agreement with Verizon Wireless Communications for a cell site located in the SRP easement on the north side of Town Lake.

DOCUMENT NAME: [20050707ITD01.pdf](#) **VERIZON WIRELESS (0903-54)**

E. Resolutions

62. Approved RESOLUTION NO. 2005.31 amending the City of Tempe 401(K) Savings and Investment Plan and Trust.

DOCUMENT NAME: [20050707hrjh01.pdf](#) **401(K) PLAN (0303-01-02)**

6. PUBLIC APPEARANCES

SCHEDULED PUBLIC APPEARANCE:

- **Glenn Taylor, Tempe**, re: "Bus notification bells are too loud." He is concerned for the safety of the residents, as well as the bus drivers, the community noise standard and common courtesy. He has talked to the bus system and the City of Tempe for several months and has invested more than 100 hours of his own time to resolve this problem. He has either been told it would be fixed or it cannot be fixed. Apparently, they don't know how to remedy the problem. The system operates at 85 decibels and he requested it be lowered to 65 db, which follows the ordinance. Taxpayers deserve a better run business.
- **Corey Woods, Tempe**, re: Eminent Domain issues. He is speaking on behalf of concerned citizens and business owners who own land in Tempe. The Supreme Court recently ruled that private property may be seized using eminent domain even if the intent is for private development. This has instilled doubt and uncertainty in even the strongest of industries. Eminent domain is a strong tool for redevelopment and in some cases in can be beneficial both to the City and to those who lose their land. Tempe is one of the few cities that has no borders left to expand, and we are more likely to see land disputes than other valley cities. As a community, we must sit down and draft new legislation and policies that will protect our property rights, yet allow for new growth when truly needed. He announced a panel discussion on eminent domain on July 20th at the University Presbyterian Church and encouraged everyone to attend and voice their opinion.
- **Dennnis Skolnick, Tempe**, re: "Why a DUI is like Eminent Domain." When Council considers these kinds of issues, it's important to remember that decisions about eminent domain could be creating a void in peoples' lives that can never be filled and history that cannot be replaced. Also, the Kiwanis Club did a great job with the 4th of July celebration.

UNSCHEDULED PUBLIC APPEARANCES:

- **Ed Valenzuela, Tempe**, re: Amaya case. The Tempe Hispanic Forum is trying to make Tempe a better to place to live and work. He submitted a statement from the Tempe Hispanic Forum. Tempe needs to address the improper use of a diversity program as a substitute for an effective equal employment opportunity program. Management officials have failed to understand the distinction between a diversity program and equal employment opportunity requirements under state and federal laws. The City still lacks the will and/or competence to understand this distinction because of its reliance on a diversity program. The City has not taken steps to examine the rules, policies, practices, and procedures that would avoid or prevent further instances of unlawful employment discrimination.
- **Raquel Gutierrez, Tempe**, re: Amaya case. The recent verdict is a great win for all City workers, demonstrating that the demeaning treatment of workers is unacceptable. This verdict is a clear message to City leadership that they must take immediate and quick action in situations that endanger the civil rights and dignity of any City worker. We know that financial compensation is only a part of what these workers deserve. They deserve a public apology by current city leadership and by the past leadership. This would be a true beginning to heal the wounds. The

second element of healing will be realized in the future actions of City leadership at all levels to enforce the City's vision of creating a work environment in which all individuals are treated with respect and dignity.

- **Cecilia Esquer**, Tempe, re: Amaya case. The verdict is a victory for all City workers. The plaintiffs had the courage to bring this lawsuit. The City is on a threshold of a new era and the City can continue a policy of protecting those who do not share the Council's view of commitment to diversity and equal treatment, or it can recognize those who are committed to diversity within the high management levels and work to help the City meet its commitment. It's time for Council to pursue the second choice and work on its commitment to diversity and equal treatment of its employees.

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

- Councilmember Carter thanked the Kiwanis Club for the best fireworks show ever, Public Works for having it all cleaned up by the next day, and the Police Department, Transit and Special Events staff for all their hard work.
- Councilmember Hutson acknowledged the Community Development Department/Housing Services for being named "Housing Authority of the Year for 2004." That speaks highly of the staff. He also noted that he and Fire Chief Jones attended the impressive swearing-in ceremony for the new Scottsdale Fire Department last week.
- Councilmember Arredondo thanked the Kiwanis for the 4th of July event and suggested that next time the fireworks could start a little earlier. He thanked those who spoke about the Amaya case and assured them that their comments provided food for thought. He asked Chief Jones to speak about a recent fire on Perry Lane in the County Island.

Fire Chief Cliff Jones stated that the updated Automatic Aid System went into effect on July 1, and the City of Scottsdale joined the Valley Automatic Aid System. The fire occurred that weekend, and four Scottsdale companies were there, as well as Tempe and Phoenix. It was a serious commercial fire with exposures on both sides of the building and a great job was done to prevent the fire from spreading. Automatic Aid played a significant role in fighting that fire.

- Mayor Hallman repeated the statement he made at the beginning of the meeting. As of today, July 7th, Council is not in a position to comment about the Amaya case further, based on a decision made by the insurance carrier. The carrier has taken full control of the case and removed it from the City's determination.

Meeting adjourned at 10:10 p.m.

Hugh Hallman, Mayor

ATTEST:

Kathy L. Matz, City Clerk

I, Kathy L. Matz, the duly appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Regular Council meeting of July 7, 2005, by the Tempe City Council, Tempe, Arizona.

Dated this _____ day of _____, 2005

Kathy L. Matz
City Clerk